HIGH COURT OF UTTARANCHAL AT NAINITAL

CRIMINAL APPEAL NO.197 of 2004

Budh Ram
S/o Shri Nageshwar
R/o village Siriya Bajhua
P.S. Bajirganj
District Gonda, U.P. .....Appellant

Versus

State of Uttaranchal .....Respondent

Date : 22nd July, 2005

Mr. Ramji Srivastava learned counsel for the appellant
Sri Rajeev Mohan learned Brief Holder.

Hon'ble J.C.S. Rawat, J.

1. This a criminal appeal against the judgment and order dated 28.4.2004 passed by Sri Ram Singh, the then Addl. Sessions Judge /Ist F.T.C., Dehradun in S.T. No.76/2003 State Vs. Budh Ram, whereby the appellant was convicted and sentenced to undergo R.I. for a period of five years and to pay a fine of Rs. 5000/- under section 328 I.P.C. The appellant was further convicted and sentenced to undergo R.I. for a period of two years and to pay a fine of Rs. 500/- under section 379 I.P.C. The appellant was also convicted and sentenced to undergo R.I. for a period of two years and to pay a fine of Rs. 500/- under section 411 I.P.C. All the sentences will run concurrently.

2. The prosecution case in a nutshell is that on 14.4.2003 at about 8:15 PM an FIR was lodged by Anand Singh S/o late Sri Shyam Singh against the unknown person alleging therein that on 12.4.2003 he was traveling in Train No. 3010 (Hawrah Doon Express) towards Mughal Sarai from Raiwala after completing two months holidays of his Military duty. In front of

the complainant one person-accused, who was about 5 feet in height, & aged 26 years, was also sitting in the boggy. Thereafter, the said person demanded water

bottle from the complainant and the water bottle was given to the accused. After taking the water, the accused person returned the water bottle to the complainant. When complainant took the water from the said bottle he became unconscious. Thereafter, the complainant found himself in the hospital, where a constable was there. On being made enquiry about the suitcase, the said constable told the complainant that he was found unconscious condition in Train No.3010 (Hawarah Doon Expres) on 12.4.2003 and at that time there was no suitcase. The complainant stated to the police that his suitcase was cream coloured and 24 inch in size, in which the sticker of his name 'Anand' was adhered. The complainant was sure that person, who took his water bottle, had mixed the intoxicant substance into the water bottle. Due to which, he became unconscious and the accused person took his suitcase. When the complainant was discharged from the hospital he went to the police station G.R.P., Dehradun on 14.4.2003 to lodge the report. The complainant lodged the FIR against the unknown person and the same was registered as case person and the same was registered as case crime No.24/2003 under section 328,379 I.P.C.

3. On 15.4.2003 at about 7:10 AM when the S.I. Diwani Ram Arya alongwith Constable Anil Kumar was on patrolling at platform No.2, the complainant informed them that the person, who mixed the intoxicant substance into the water bottle and due to which he became unconscious and took his suitcase, is

roaming at platform No.1. The said person is also having the same suitcase in his hand. Then, S.I. Diwani Ram Arya arrested the accused person and recovered the suitcase from his possession. The complainant identified his suitcase. Thereafter, on 16.4.2003 the S.I.

prepared the siteplan (Ex.ka.7). The investigation was taken up as usual which culminated into the submission of the chargesheet.

4. Charge was framed under sections 328,379, 411 I.P.C. against the appellant. The appellant denied the charges and claimed the trail.

5. The prosecution in support of its case examined five witnesses. Anand Singh (PW-1) was the complainant. Diwani Ram Arya (PW-2) was the S.I., G.R.P., Dehradun. Constable Anil Kumar (PW-3) and Dr. Rajeev Verma (PW-4) and S.I. V.P.S. Tomar (PW- 5). The aforesaid prosecution witnesses have proved the FIR (Ex.ka.1), Furd Recovery (Ex.ka.2), G.D.(Ex.ka.3 & 4), medical report (Ex.ka.5), discharge slip of the complainant (Ex.ka.6), site plan (Ex.ka.7), chargesheet (Ex.ka.8), Chick report (Ex.ka.9) and G.D. (Ex.ka.10).

6. In the statement recorded u/s 313 Cr. P.C. the appellant denied the prosecution case and stated that he has been falsely implicated in this case.

7. The learned trail court after appraisal of the evidence on record found the appellant guilty under section 328, 379 & 411 IPC and convicted and sentenced the appellant as mentioned above.

8. I have heard the learned counsel for the parties and perused the evidence on record.

9. The prosecution has adduced the evidence of Anand Singh (PW-1), who was the main victim of the incident. PW1 has narrated the incident as mentioned above in para-2 of the judgment. PW1 was cross-examined at length but nothing could be elicited and

D.W.1-Budh Ram (appellant) had stated in his evidence that he had no enmity with the complainant. As such, there is no reason as to why the complainant will falsely implicate the accused in this case. It is further in the evidence of DW-1 that he is not the resident of Dehradun or Haridwar. He is the resident of Gonda and he reached at Dehradun a month prior to the date of his arriest to search the work and some people of his native are doing the work of rickshaw pulling. when he could not find any work at Dehradun he reached in the platform to return his house, where he was apprehended by the police. DW1 has not stated that what type of work he was working during that period and where he was staying. These facts also corroborate the evidence of PW1 with regard to the incident. It is also on record that the appellant was traveling in the same boggy on the date of incident. PW1 has state that he was sitting in front of the complainant. It is also in the evidence of PW1 that he was traveling in Train No.3010 (Hawrah Doon Express) towards Mughal Sarai from Raiwala after completing two months holidays of his military duty. He was going to join his Army duty. The accused person, who was sitting in front of him, demanded water bottle from him and the complainant gave the water bottle to the

accused. After taking the water, the accused person returned the same to the complainant. When the complainant took the water from the said bottle, he became unconscious. The defence has made a lengthy cross-examination, but nothing could be elicited from the evidence of PW1. PW-1 has categorically given the details of his suitcase. The goods found inside the suitcase, which was recovered from the possession of the appellant, corroborates the statement of PW1. As

such, the evidence of PW-1 with regard to the theft and recovery is totally cogent and believable.

10. It is also in the evidence that when the complainant took the water he became unconscious. Thereafter, the complainant found himself in the hospital. The complainant was sure that the person, who took his water bottle, had mixed the intoxicant substance into the water bottle. Due to which, he became unconscious and the appellant took his suitcase. It is also in the cross-examination by way of suggestion from the defence that the complainant has taken the liquor and due to which he became unconscious. But the doctor has categorically stated that such type of unconsciousness cannot be caused by taking the liquor. It is also established that the victim was administered the intoxicant substance, by which he became unconscious. Perusal of the discharge slip reveals that the victim was admitted on 12.4.2003 and was discharged from the hospital on 14.4.2003. This fact also supports the prosecution case.

11. Now, it has to be decided as to whether the appellant was involved in the commission of offence or not. It has come in the evidence that on 15.4.2003 at about 7:10 AM when the S.I. Diwani Ram Arya alongwith Constable Anil Kumar was on patrolling at platform No.2, the complainant informed them that the person, who mixed the intoxicant substance into the water bottle and due to which he became unconscious and took his suitcase, was roaming at platform No.1. The said person was also having the same suitcase in his hand. Then, S.I. Diwani Ram Arya arrested the appellant and recovered the same suitcase from his possession. The complainant also identified his suitcase as well as the articles found in that suitcase.

12. The learned counsel for the applicant contended that the prosecution has not taken any independent witnesses at the time of alleged recovery. It was pointed out that the police did not examine the coolie, who brought the cloth to seal the recovered articles at the time of recovery. The learned G.A. refuted the contention and contended that the police tried to take the public witnesses, but the police could not get the public witnesses. The appellant was in the platform and he could have boarded the train and could have gone somewhere. It was utmost urgency to apprehend the appellant and to recover the said suitcase from his possession. It is pertinent to mention here that the complainant was himself present at the time of recovery and there was no enmity between them. The complainant is also the witness of the recovery. The complainant identified his suitcase as well as the articles, which was kept inside the suitcase. The articles recovered from the possession of the appellant were belonging to the complainant and the police cannot plant such items. The recovered articles cannot

be manufactured and planted against the appellant. As such, the recovery is cogent and reliable.

13. The learned counsel for the appellant further contended that the complainant is an army personnel and he boarded in the general compartment instead of army boggy. However, he should have preferred to sit in the Army boggy. As such, the prosecution story is completely unreliable. The learned G.A. refuted the contention and contended that it is not always necessary that an army man may prefer to sit in the army boggy only. If he feels that the seats are available in the general compartment, he can sit in the

general compartment. Perusal of the record reveals that the train stops only for five minutes in the platform. The time was very short and as such he could not board in the army boggy. If the train stops only for five minutes it is quite natural for a person, who is on the platform, will see where the seats are available and he will occupy the seat. Therefore, the contention raised by the learned counsel for the appellant has no force.

14. The learned counsel for the appellant further contended that there are major contradictions in the evidence of PW-1. The learned G.A. refuted the contention and contented that a person cannot accurately recall a conversation and reproduce the very words used by him or heard by him. He can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. The witness cannot be expected to pose a photographic memory and to recall the details of an incident.

15. If the contradictions are there it do not affect the prosecution story. The courts should not take into account such minor discrepancies, which are bound to come on the truthful testimonies. The discrepancies as pointed out by the learned counsel for the appellant are not of any consequences. The Court is within its jurisdiction being the first appellate court to reappraise the evidence, but he discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the

evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

{See Leela Ram Vs. State of Haryana 2000 SCC (Cri) P/222}

16. The appellant have given his statement under section 313 Cr.P.C. that on 12.4.2003 he was travelling in the reservation boggy for which he had no valid ticket. As such he was handed over to the police. If the defence theory was found true the railway authorities would have challaned the appellant under the provision of Railway Act. The evidence of prosecution is completely. reliable and the learned trial court has rightly relied upon the prosecution evidence.

I am completely in agreement with the findings of the trail court.

17. In view of the above discussion I am of the view that the prosecution has established the guilt beyond any reasonable doubt against the appellant. I find that the learned trial court has rightly convicted and sentenced the appellant and there is no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trial court against the appellant are confirmed.

18. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within four months.

(J.C.S. RAWAT, J.)

dated 22.7.2005
LSR